



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (“OIRA”), of the Office of Management and Budget (“OMB”), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website’s search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entries for OMB Control Nos. 3038-0096 and 3038-0070, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- *Mail*: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier*: Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.¹ The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Tom Guerin, Assistant Chief Counsel, Division of Market Oversight, at (202) 836-1933 or tguerin@cftc.gov, or Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

¹ 17 CFR 145.9.

Title: “Swap Data Recordkeeping and Reporting Requirements” (OMB Control No. 3038-0096) and “Real-Time Public Reporting” (OMB Control No. 3038-0070). This is a request for revisions to currently approved information collections.

Abstract: Pursuant to section 2(a)(13)(G) of the Commodity Exchange Act (“CEA”), all swaps, whether cleared or uncleared, must be reported to SDRs.² CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.³ Part 45 of the Commission’s regulations implements the swap data reporting rules. Section 2(a)(13) of the CEA authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.⁴ Part 43 of the Commission’s regulations implements the real-time public reporting rules. Regulations 45.14 and 43.3(e) require that if a SEF, DCM, or reporting counterparty determines that it will fail to timely correct an error in swap data or swap transaction and pricing data, respectively, it shall notify staff of its determination that it will fail to timely correct the error.⁵

On June 10, 2022, DOD published a “Swap Data Error Correction Notification Form,” which sets out the form and manner for notifications pursuant to regulations 45.14 and 43.3(e) and enumerates information sufficient to provide an initial assessment of the scope of the error or errors that were discovered and any initial remediation plan for correcting the error or errors, if an initial remediation plan exists.⁶ The Swap Data Error Correction Notification Form requests, among other things: (1) identifying information for the swap execution facility (“SEF”), designated contract market (“DCM”), or reporting counterparty making the notification; (2) clarification whether errors relate to previously reported and/or unreported swaps; (3) unique swap identifiers

² 7 U.S.C. 2(a)(13)(G).

³ See 7 U.S.C. 24a(b)(1)-(3).

⁴ 7 U.S.C. 2(a)(13)(E).

⁵ 17 CFR 45.14(a)(1); 17 CFR 43.3(e)(1). Commission regulations referred to herein are found at 17 CFR Ch. 1.

⁶ See CFTC Letter 22-06.

and/or unique transaction identifiers for transactions representative of the error or errors; (4) the asset classes to which the error or errors pertain; (5) the number of transactions impacted by the error or errors; (6) the percentage of the SEF, DCM, or reporting counterparty's reported swap transactions affected by the error and that percentage for each impacted asset class; (7) the date the SEF, DCM, or reporting counterparty discovered the error or errors and a description of how discovery came about; (8) an indication whether the issues underlying the error or errors are still producing new errors; and (9) any initial remediation plan or, if no initial remediation plan exists, an indication of when the SEF, DCM, or reporting counterparty expects to have a remediation plan. The Swap Data Error Correction Notification Form, which will be required for error data notifications after December 5, 2022, is appended to CFTC Letter 22-06 and is available as a stand-alone form on the Commission's website.⁷

As the Swap Data Error Correction Notification Form provides the form and manner and specifies sufficient information required to satisfy information collections under regulations 45.14 and 43.3(e), the Commission does not believe it imposes new information collection requirements beyond those adopted by the Commission in November 2020.⁸ The information collection requirements under OMB Control Nos. 3038-0096 and Information Collection 3038-0070 are necessary to obtain information detailing the cause, nature, and scope of swap data errors.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On June 24, 2022, the Commission published in the Federal Register notice of the proposed revision of this information collection and provided 60 days for public comment on the

⁷ See Swap Data Error Correction Notification Form, available at https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_17_Recordkeeping/index.htm.

⁸ See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75633-75634 (Nov. 25, 2020).

proposed revision, 87 FR 37839 (“60-Day Notice”). The Commission received two relevant comments on the 60-Day Notice,⁹ which are discussed below.

First, BSEF commented on aspects of the error correction notification process related specifically to SEFs. BSEF proposed that SEFs be permitted to submit the Swap Data Error Correction Notification Forms through the CFTC portal rather than via email, but did not specify any impact of this proposal on the Commission’s burden estimate.¹⁰ It also stated that it believes certain notifications related to open swaps that may be required by the Swap Data Error Correction Notification Form will be impossible for a SEF to complete, as SEFs do not generally possess open swaps information.¹¹ BSEF suggests this would impose a new collection of information.¹² BSEF also stated it believed the Commission has underestimated the burden hours required by the information collection because, for a SEF, there may be multiple reports per year triggered by its participants.¹³

Second, BSEF and BPEC both commented on the timelines for error correction notifications. BSEF stated that the Swap Data Error Correction Notification Form should be revised to account for the fact that a remediation plan may not be available at the time the form is required to be filed.¹⁴ BPEC stated that it may be difficult to complete the Swap Data Error Correction Notification Form within the twelve-hour timeframe provided in regulation 45.14(a)(1).¹⁵ Both BSEF and BPEC also expressed concerns that notifying entities may make unintentional misstatements through the Swap Data Error Correction Notification Form if they are required to complete the Form within the timeframe provided in regulations 45.14 and 43.3(e).¹⁶ Both BSEF and BPEC requested

⁹ The following entities submitted a relevant comment letter: Bloomberg SEF LLC (“BSEF”) and BP Energy Company (“BPEC”). Other comments submitted did not concern the PRA burden for information collections under regulations 45.14 and 43.3(e).

¹⁰ BSEF at 2.

¹¹ BSEF at 2-4.

¹² BSEF at 2-4.

¹³ BSEF at 5.

¹⁴ BSEF at 4-5.

¹⁵ BPEC at 2.

¹⁶ BSEF at 4; BPEC at 3.

the Commission consider adopting a materiality threshold to trigger the requirement to answer some or all questions included in the Swap Data Error Correction Notification Form.¹⁷

Third, BPEC commented on certain of the questions included in the Swap Data Error Correction Notification Form. Specifically, BPEC stated that questions 3, 7, and 10 through 14 should be removed from the Swap Data Error Correction Notification Form, or applied only after a materiality threshold is met or after a longer time-frame.

The Commission has determined to retain the burden hour estimates described in the 60-Day Notice for the reasons described below. The Swap Data Error Notification Form specifies the form and manner for reporting in compliance with Commission regulations but does not impose new information collection obligations not already mandated by regulations 45.14 and 43.3(e).

First, the introduction of the Swap Data Error Correction Notification Form to implement regulations 45.14 and 43.3(e) does not impose new requirements on SEFs. With respect to BSEF's statements that SEFs should be permitted to submit Swap Data Error Correction Notification Forms through the CFTC Portal, many market participants do not have access to the CFTC Portal. Rather than receiving error notifications in a variety of formats, staff published the Swap Data Error Notification Form to ensure notifications are submitted in a uniform format and manner. BSEF also expressed concern that SEFs may be unable to submit the required notifications because they generally lack access to open swaps reports. BSEF's concern appears to be based not on any aspect of the Swap Data Error Correction Notification Form that is the subject of this notice, but rather on statements in CFTC Letter 22-06 that encourage general compliance with pre-existing error correction requirements.¹⁸ Neither CFTC Letter 22-06 nor the

¹⁷ BSEF at 5; BPEC at 3.

¹⁸ See CFTC Letter 22-06, at 3 n.11. BSEF also encouraged the Commission to amend the Swap Data Error Notification Form to account for the fact that SEFs do not have access to open swap information.

Swap Data Error Correction Notification Form establish any independent requirement that a market participant review open swaps that differs from existing requirements in CFTC regulations. Finally, the Commission takes under advisement BSEF's prediction that, for a SEF, there could be multiple reports triggered per year. The frequency of reporting was previously subject to comment in 2019,¹⁹ and the revisions to the information collection at issue in the notice of June 24, 2022²⁰ do not alter that aspect of the Commission's burden estimates. Nonetheless, the Commission will continue to review reporting volumes and may revise its burden estimates if necessary following implementation of the new Form.

Second, the introduction of the Swap Data Error Correction Notification Form does not alter the timelines for reporting and correcting errors established by regulations 45.14 and 43.3(e). With respect to BSEF's statements regarding initial remediation plans,²¹ the requirement that a notifying entity submit an initial remediation plan for correcting the error or errors, if an initial remediation plan exists, is established in regulations 45.14(a)(1)(ii) and 43.3(e)(1)(ii).²² The Swap Data Error Correction Notification Form does not add to or alter any burden imposed by that requirement. Although BSEF and BPEC expressed concern about the timeline for required filings, the 12-hour period for filing error correction notices was adopted in regulations 45.14 and 43.3(e). When adopting the 12-hour reporting period, the Commission considered

BSEF at 2-4. Because the Swap Data Error Notification Form does not refer to open swaps, however, it is unclear what amendment would be necessary to address BSEF's concern.

¹⁹ See 85 FR 75633-75634. Moreover, the commenter's prediction that a particular SEF or SEFs may submit multiple Swap Data Error Correction Notification Forms in a single year is not inconsistent with the Commission's burden estimates. As the Commission previously noted, its burden estimate is based on analysis of the average number of error notifications per SEF, DCM, and reporting counterparty. *See id.* (stating that the Commission's estimate that each SEF, DCM, and reporting party will, on average, need to provide notice to the Commission once per year is based on analysis showing that "currently, [the Commission] receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year. . . .").

²⁰ Notice of Intent to Revise Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements) and Collection 3038-0070 (Real-Time Public Reporting), 87 FR 37839 (June 24, 2022).

²¹ BSEF Comment at 4-5.

²² 17 CFR 45.14(a)(1)(ii); 17 CFR 43.3(e)(1)(ii).

comments on the timeline for correcting errors and notifying the Commission, and extended the period to correct errors specifically “to provide the entity making the correction a more accurate understanding of the scope of the error.”²³ Similarly, BSEF and BPEC’s statements with respect to a materiality threshold do not relate to the Swap Data Error Correction Notification Form, but rather to requirements established under regulations 45.14 and 43.3(e). The Commission previously considered comments on a materiality threshold and declined to adopt such a threshold.²⁴

Third, the questions included in the Swap Data Error Correction Notification Form do not impose information collection obligations not previously required by regulations 45.14 and 43.3(e). With respect to questions 3 and 7, which seek unique swap identifiers or unique transaction identifiers representative of the error and information concerning the volume of swaps affected by the error, BPEC states that it will be difficult to provide this information within twelve hours of determining it will be unable to timely correct an error or errors.²⁵ However, in order for a notifying entity to determine it will be unable to timely correct an error, it must possess some information concerning the scope of that error. The identification of representative affected swaps and the number of those swaps is necessary to specify the scope of an error or errors. Questions 10 through 14 seek a brief narrative description of the error; clarification whether the underlying issues are producing new errors; any initial or other remediation plan or, if none exists, an estimated date for an initial or other remediation plan; an indication whether the notifying entity has reviewed its swap reporting processes to identifying other potential reporting issues similar to that underlying the errors; and clarification whether the error impacted the notifying entity’s reporting obligations under

²³ 85 FR 75629.

²⁴ See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75628-629 (Nov. 25, 2020) (“The Commission similarly declines to accept recommendations to limit the scope of the error correction rules by adopting a materiality requirement. . . .”).

²⁵ BPEC at 3.

part 45, part 43, or both parts 45 and 43. BPEC states that because responding to these questions could raise compliance implications independent of the underlying swap data error, a reporting counterparty will be unable to complete questions 10 through 14 without legal review, senior level review, and IT support.²⁶ However, this information concerning the scope of the error or errors is necessary for staff to assess the impact of the error or errors, including the extent to which erroneous swap data has been disseminated to the public.

Burden Statement: The Commission estimates that the respondent burden for these collections is as follows:

- Collection 3038-0070 (Real-Time Reporting)

Respondents/Affected Entities: SEFs, DCMs, and reporting counterparties

Estimated Number of Respondents: 1,742.

Estimated Average Burden Hours Per Respondent: 6.²⁷

Estimated Total Annual Burden Hours: 10,452.

Frequency of collection: As needed.

The Commission does not anticipate any capital costs or annual operating and maintenance costs associated with this collection.

- Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements)

Respondents/Affected Entities: SEFs, DCMs, and reporting counterparties.

Estimated Number of Respondents: 1,742.

Estimated Average Burden Hours Per Respondent: 6.²⁸

²⁶ BPEC Comment at 2-3.

²⁷ The Commission estimates that each SEF, DCM, and reporting counterparty will, on average, need to provide notice to the Commission under regulation 43.3(e) once per year and that each instance will require 6 burden hours.

²⁸ The Commission estimates that each SEF, DCM, and reporting counterparty will, on average, need to provide notice to the Commission under regulation 45.14(a) once per year and that each instance will require 6 burden hours.

Estimated Total Annual Burden Hours: 10,452.

Frequency of collection: As needed.

The Commission does not anticipate any capital costs or annual operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 29, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

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